

Epistola Medie Saxonica

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OR

Middlesex first Letter to his Excellency,

The Lord General Cromwell:

Together with their Petition concerning Tithes and
Copy-holds of Inheritance, presented to the Supreme Autho-
rity, *The Parliament of ENGLAND.*

Wherein the tortious and illegal Usurpation of Tithes, con-
trary to *Magna Charta*, is discovered, the blemished dignity of Copy-hol-
ders revived, and how Lords of Manors have formerly inroached
upon their liberties, by imposing Arbitrary Fines, and
multiplying of Heriots.

Whereunto is annexed two Additional Cases con-
cerning the unreasonable exactions of Fines and Heriots,
contrary to Law, in these latter times.

Published for the satisfaction and vindication of the
people of *England*, from all Decimal Oppression
and Lordly Tyranny.

The Second Edition; To which is added a Reply,
Styl'd,

Tithes totally routed by Magna Charta.

L O N D O N,

Printed by F. L. for William Larnar, at the Black-
more, near Fleet-Bridge, 1 6 5 3.



In Decimas & serva Prædia, Carmen
Hexastichon.

SImos Angliacæ, nec sacra oracula suadent,
Cur solvis Decimas, Anglia lasa, tuas?
Si felix rediit seclum, vixitque Tyranni,
Cur servile feres, Anglia mæsta, jugum?
Sic pia vota tulit Miles, totusque Senatus,
Reddere cur differs, Anglia, vota Deo?

Vpon Tithes and Copy-holds, an
Hexastick Verse.

IF English Custome, nor Gods Words perswade,
Why yet are Tithes, deceived England, paid?
If th' age of Gold be come, and Tyrants broke,
Why dost thou, England, bear the servile Yoke?
If th' Army, and the Senate, Vows have made,
Why are they by them, England, thus delay'd?

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OF F. L. BAY

JUNE 1, 1916

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Middlesex first Letter to his Excellency.

May it please your Excellency,



He sweet odour of your name, and unparallel'd affection towards goodnesse, and good people, hath imboldned us, in the behalf, and at the intreaty of the wel-affected of this County, to communicate to your Excellency, our intended *Addresses* by way of Petition to the *Supreme Authority*, for the removal of some grievances which have layen long and heavy upon the free-born people of this Nation; that so receiving your judicious approbation and assistance, we might with the greater alacrity make our procedure. Now Sir, the Heads of our Petition are onely two; namely the removal of that usurped Popish relique Tithes, and the abolishing of that Tyrannical Oppression and slavish tenure of Copyholds of inheritance, finably at the Lords will, as things Diametrically repugnant to divine and humane Laws, *Lev. 25. 14. Ye shall not oppress one another, and Jer. 30. 20. I will punish all that oppress tbe:* where your Excellency may be pleased to take notice of a prohibition not to oppress the people of God, and of a punishment threatned to those that do it. And in *Exo. 23. 5.* There is a command, that if we see the Ass of our enemy lying under a burthen, that we shall not passe by but help him: If therefore an oppressed brute Creature ought to be relieved by us, how much more a rational? how much more a Christian and wel-affected people? who in the blackest times of danger and perit, have adhered to the State with undanted resolutions, adventuring lives, goods, and all, for the glory of God, and the preservation of this Common. wealth; wherefore let not, O let not our State bury in silence the day of this peoples love, who, next to your Excellency and renowned Army, under God, have been a principal means of the glorious freedom our State now enjoys. But because most men look more upon humane, than divine Authority, especially where their own private interest falls in; and as it is

in the 5th. Book of *Aristotles* Ethicks, Can be vertuous and just in matters of their own concernment, but not so in what concerns the publique, which occasioned *Nobile illud dictum Biantis*, that noble saying of that Grecian Sage, *αρετα των ανδρων ουκ εστιν*, Power will discover the nature and disposition of every man. Therefore for the satisfaction of those, whose judgements are over-ballanced in the scale of earthly interest, (not in the least reflecting on your Excellency, whom we experimentally know to be of a more divine temper) we shall in brief produce some humane authorities, as motives to the removall of the aforesaid grievances:

First by the 29th. Chapter of *Magna Charta*, It is enacted, That no man shall be disseised, or put out of his free Tenement, Liberties, or Customes, but by the lawfull judgements of his Peers, or Law of the Land: which Charter is of so great authority, that it hath been confirmed above thirty times. Now Tithes being a part of every mans free-Tenement, or free-hold and birth right, ought not to be taken away from him, either by the Improprate Person, or Appropriate Parson, for these reasons.

First, Because by the Stat. of 25. E. 1. ch. 2. All judgements given against any points of the Charters of *Magna Charta*, or *Charta de Foresta*, are adjudged void.

Secondly, by the Stat. of 42. Edw. 3. ch. 1. If any Statute be hereafter made against either of these Statutes, it shall be void. *Cookes* 1. . . *Just. fo.* 81.

Thirdly, in *Bonhams* Case, in the 8th. Book of *Cookes* Reports and in *Dr. and Student*, it is laid down for Law, that Acts of Parliament against common Right or Reason, are *ipso facto* void.

And lastly, it is proved by *Jenkins*, fol. 139. That the Common Law shall controle Acts of Parliament made against Right or Reason, (such as all Statutes for Tithes are) and adjudge them to be void, because they deprive men of a part of their right, contrary to *Magna Charta*, and against the will of the Proprietor or owner; so that hence it will plainly appear, that those Statutes which have been made by former Parliaments concerning Tithes, in times of Popery and ignorance, and upon false grounds of their Divine Right, being Diametrically repugnant to *Magna Charta*, and destructive of common right, then were; and now are, totally void, null, and of no force; and that all Tithes taken by virtue of them, have been usurped, illegal, and unwarrantable. And
because

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because some seeing the weaknesse of their Statute-Law foundation; may fly from thence to the Umbrage and shelter of custome; we answer. It is a Maxim in Law, that a man cannot claim any thing by Custome or Prescription, against a Statute, unlesse the Custome or Prescription be saved by another Statute, *Cooks 2. p. Just. fo-21.* Now by the aforesaid Charter of *Magna Charta*, which was confirmed by *H. 3.* about the year, 1218. Tithes as well as the rest did belong to every mans Tenement and Free-hold, and so far were the Clergy at that time from claiming any Tithes to be due unto them by any Custome, as that, on the contrary, it is acknowledged at the Councill of *Lateran*, under *Gregory* the 10th. *Anno 1274.* and in the Decretal Epistle sent from Pope *Innocent* the 3d. to the Arch-Bishop of *Canterbury*, about the year 1215. that the people of this Nation did by a general Custome till then observed, dispose of their Tithes according to their own free will and pleasure. So that it is very clear at the confirmation of *Magna Charta*, no Custome of the Land for Clergy-men to have Tithes out of every Proprietors Estate, but that they were the proper right and inheritance of the owner of the Land. And for confirmation hereof, it is said by learned *Selden* in his book of Tithes, that in *H. 2.* his time, which was a little before the said Decretal, Parochial right was the right of having the Cure and offering of the Parishioners; and that to that Parochial right, no right of Tithes was annexed by the practise of that time. Whereupon it was usual with the Religious and secular of the Clergy, to covenant with their Tenants to pay them the Tithes of their Lands, that so they might prevent the Minister of the Parish, where the Lands lay. Now if there had been then any Parochial right or custom for receiving Tithes, how could such a Covenant have prevented the Parochial Minister? And that this is a clear truth, is evidenced by an Act of Parliament, in the first year of *Rich.* the 2. and in the year of our Lord 1377. in these words, It is accorded, that at what time any person of Holy Church be drawn in plea in the Secular Court for his Tithes taken by the name of Goods taken away; and he, which is so drawn in plea, maketh an exception, or allegeth, that the substance and fute of the businesse is only upon Tithes, due of right and of Possession to his Church, or to another his Benefice, that in such case the General averment shall not be taken without shewing specially how the same was his *Lay Ca-*

call: that is to say, for him to aver and maintain, that the Tithes he laid claim to, did belong unto him by Parochial right and custome, as Minister of the place, was no good and allowable plea in Court, but that he must shew in special, and in particular, how the said Tithes he laid claim to, became his *Lay Curall*; whether by grant, gift, or otherwise: So that here is not only an acknowledgement of the Pope and Clergy, but an Act of Parliament against Parochial right and custome of Tithes. And yet should we grant them a custome for Tithes, which they cannot claim without blushing; of what weight, how like a feather would it be, being put in the scale with *Magna Charta*? And although it may be objected, that they have now a long time enjoyed them, even time out of mind; yet that will not avail much, since it is not a lawfull user, but an abuser, and tortious Act, carryed on with a power contrary to all Law, equity and justice.

Moreover in customes, *Non diuturnitas temporis, sed soliditas rationis est consideranda*, Not length of time, but soundnesse of reason is to be weighed: Upon which ground at a Parliament at *Kilkenny* in *Ireland*, in the 40th. of *Edw. 3^d* The Irish customes called the *Brehon Law*, though of long continuance, were null'd by that Parliament, upon this ground or Maxim, that *malus usus est abolendus*, an ill custome (as Tith-taking is) ought to be abolished. So that the plea of a long continued custome of taking Tithes, contrary to *Magna Charta*, and common right, will but little conduce to the justification of its authority and lawfulness. And if from hence, any shall fly to Scriptures refuge, which none but avaritious Sciolists in sacred law and language will attempt; we shall, if the weaknesse of their own arguments be not a clear confutation of their errors and injustice, return a modest and sober answer.

Secondly and lastly, as to the other branch of our Petition concerning Copy-hold Lands of inheritance, finable and also heriotable, by the Tyrannicall practise of many, at the will of the Lord of the Manor, we humbly conceive, that by the equity of the tenth chapter of *Magna Charta*, Let no man be distreined to do greater service for his free Tenement than he ought, grounded upon the 25. ch. of *Levis. v. 17*. Ye shall not oppresse one another: all those arbitrary and unreasonable exactions, of Fines and Heriots, exercised of late years by Tyrannical Lords of Manors, have been
illegal,

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illegal, and repugnant to the equity, if not the letter of the said Charter, and have run beside the channell of charity, law, and justice; But because many of late and former times have laboured much to vilifie and obscure the credit and esteem of Copy-holders of inheritance, and their tenure, thereby to make way for their pride, avarice, and Tyranny, we shall therefore make a little further inquiry into the discovery of them. *Bracton lib. 4. ch. 28.* saith, that *Villanagiorum*, *alindpurum*, *alind privilegatum*, Of Villenages, one kind is pure and perfect Villenage, the other a more free, honourable, and privileged. Where note, that Villenage in its proper and genuine signification, is nothing but the service of a Husbandman, which may be either honourable or base, according to the quality of the person and tenure: and therefore he saith, Pure or base Villenage is that, whereby either a free-man or a bond-man so holds of his Lord, as that he is tyed to do whatever he shall command him, not knowing over night what he must do the next morning, and always in all things is held to uncertainties; and of this sort is *Littletons* Tenure of Villenage, whose large Tract upon that subject might well have been spared, since there were very few, if any, even in his time, who held by that base and unworthy Tenure.

Now the other sort called by *Bracton*, *Privilegiatum*, Privileged Villenage, or as he termeth it in his 2d. book, and 8th. and and 35th. Chap. *Villanum Soccagium*, qualified Soccage, which is the same with *Littletons* Tenure of Copy-holds, where the Tenants hold their Land by Copy of Court Roll, as *Cook* in his Commentaries upon *Littleton* 1. p. *Inst. fo. 58.* acknowledgeth. So that *Bractons* qualified or privileged Soccage, and our Copy-holds, are one and the same, which is more clearly proved by the same manner of conveyance in alienations: for saith he in *li. 2. cap. 8.* *Si Villanus Sockmannus Villanum Soccagium*; if a qualified Sockman or Copy-holder, will convey his qualified Soccage to another, let him surrender the same unto the hands of the Lord, or his Steward, and let the other receive it from them; which is the form we now use. And in his 1. Book and 2d. Ch. they are called *Gleba ascripti*, Inrolled Tenants of the Glebe or Manor, and who did enjoy such privileges, as that they could not be put out, so long as that they paid their certain and yearly pensions, whosoever was Lord, neither might they be compelled to keep their Tenement.

but

but might alien when they pleased, and they then, as we now, did hold their Tenements, *ad voluntatem Domini, secundum consuetudinem Manerii*, at the will of the Lord, according to the custome of the Manor: Yet was not that such an unbridled will, as many pragmatial Novices in Iurisdictional Learning now Imagine, not a naturall will, but a legall will, bounded by reason, Law and custome; So that if the Lord of the Manor did at any time goe about to disturb, or put them out of their Tenements, although they might not have an Affize, yet they had *Parvum breve de Recto secundum consuetudinem Manerii*, a small writ of right, according to the custome of the Manor, for to regain their Estates. *Bratton lib. 1. cap. 2. & lib. 5. cap. 2* where the writ is likewise expressed. And in his 4th. book and 28 Chap. He saith, That if the Tenant be ejected by his Lord, he shall have a jury impannell'd, to enquire of the Covenant, and consent of the Lord, in admitting of him to be his Tenant, whom he ejected, and he shall be restored; because, *Jura non debent juvare dominum, contra voluntatem & consensum suam, quia semel voluit conventionem*, The Laws ought not to relieve the Lord against his own will and consent, because he hath made a Covenant, that his Copyhold Tenant shall enjoy his Tenement, performing his services and customes, *li. 2. cap. 8. and li. 4. cap. 28.* And in the Reign of E. 3. and E. 4. Sir Iohn Danby and Thomas Brian Lord chief Justices, were of opinion, that Copy-holders ejected by their Lords, might have an action of Trespasse. Neither is *Bratton* single in his good esteem of privileged Sockmans, or Copy-holders, since *Fleta* writ by a great Lawyer about E. 2 his time, and *Ockam* in H. 2. his Reign, do both of them honour Copy-holders in those elder times, with the name of customary Tenants: And *Ockam* not only spake worthily of them, but of their Original, whose works through the envy and Tyranny of the times, have not had the liberty to appear in publique. And *Lombard* in his book *De Priscis Anglorum legibus*, of the ancient Laws England, saith, That Copy-holds were long before the Conquest, and then call'd by the name of *Book-land*: and since the Conquest they have been honoured with many worthy appellations, as of Copy-holders, in H. 5. of Tenants by the Rod, in H. 4. of Tenants by the Roll, according to the will of the Lord, in E. 3. of Customary Tenants, in in E. 1. *Cooks 1. p. Inst. fol. 58.* And because Copy-holders have been

been much abused in the late corrupt times of Monarchy, not only in the disgracing of their Tenure, but also in the altering and multiplying their Customes and services: great persons falsely pretending, as if poor Copy-holders had *nil de jure*, but all *de gratia*, nothing of right, but all of favour. Therefore for further satisfaction, we will make some brief discovery therein. *Bracton* in his first Book and second Chapter, saith, That the works of privileged Sockmans or Copy-holders were, though servile, yet certain and nominated. And again in his 4th Book and 28th Chapter, That qualified Sockmans had their Tenements granted unto them to hold by Covenant, for certain services and customes named and expressed, although the services and customes were servile; that is with Cart, Plough, or the like, at certain set times in the year, according to agreement. And again a little after, *Villani Sockmanii villana faciunt servitia*, Qualified Sockmans do servile works and services, yet certain and determined. Now *Cook* upon *Magna Charta*, ch. fol. 13. saith, That in these words, reasonable customes, and reasonable services, all Fines, whether certain or uncertain, and other Customes and Duties are comprehended: And if so, then for certain all Fines of Copy-holds were in *Bractons* time certain, and not as now uncertain and Arbitrary. But yet by the way take notice, that he doth not speak of any Fines to be paid by Qualified Sockmans, upon death or alienation, that word under that notion being unknown to him or any other (as we conceive) of that age. And having in his second Book and five and thirtieth Chapter, treated at large, who ought to do Homage, and who Fealty, and having shewed that both free and qualified Sockagers ought to do Fealty to their Lords, comes in the following Chapter to treat of Reliefs: and in the eighth branch of the Argument of that Chapter, makes this Quærie, *Si de Soccagiis dari debet relevium?* If of Sockages (speaking plurally) a relief ought to be given, which must be understood both of free and qualified Sockage; and towards the latter end of the Chapter, saith, *Et nunc videndum, si de Soccagio dari debet relevium?* And now next comes to be considered, whether a Relief ought to be given of Sockage? which being spoken indefinitely, and in generall, without adding any Epithet, either of free or qualified, must in all construction, if you consult the beginning of the Chapter, be understood both of free and qualified

Socage. So that that duty or performance, which upon the death of the Ancestor, was given in *recognitionem Domini*, by way of acknowledgement of his Dominion and Lordship; and as he saith, *ad relevandam hereditatem*, to relieve and raise the Estate and Inheritance into the hands of the Heir, was *Præstatio quadam loco relevii*, a certain prestation or performance, instead of a Relief, (for he will allow it properly to be a Relief, which the Soccager either free or qualified paid) due onely upon death, but never upon alienation, and was ever certain, namely a double Quitrent, that is to say, one years Rent due to the Lord, besides the yearly Quitrent. And this is that Duty as we clearly conceive, which since they have new named and called a Fine, and exacted not onely upon deaths of Copy-holders, but Alienations also; and not onely according to two years Quitrent, as by Law they ought, but according to their unreasonable lusts and desires, forcing from their Tenants not onely two years, but even three years Fine and more, according to the yearly value and Rent of the Land: So that the Copy-holder, who was wont according to the antient Law and Custome, to pay for a Fine upon Death onely, but two years value according to the Quitrent, is now driven to pay two and three years value according to a full and rackt Rent; and that upon alienations too, contrary to the said antient Law and Custome, and all good conscience. Neither is *Bracton* alone in ascertaining the services and customes of Copy-holders, but others have said the same, and namely *Britton* a Bishop, in *E. 1.* and very learned in the Laws; and who at the Kings Command composed them into a compleat Volum: where treating of Copy-holders of Inheritance, setteth it down for positive Law, that such were their privileges, that their Lords might neither increase their services (under which as before is shewed, are comprehended Fines) nor change them, to make their Tenants doe other services or more. *Brit. fo. 165.* And accordingly was the judgement of a whole Parliament in the same Kings Reign, though ill, (if not of purpose) and vitiously translated; which yet for further satisfaction we will here set down, as we have received it pointed, and comma'd by *Cook* in his 4th book of Reports, in *Browns Case*, in these words, *Inquirendum est etiam de custumariis, viz. quot sunt custumarii. & quantum terra quilibet custumarius teneat, qua opera, quas consuetudines faciat, & quantum opera*

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opera & consuetudines cuiuslibet customarii valeant per annum, & quantum redditur de reddit. Assise per annum, prater opera & consuetudines qua possunt talliari, & qua non ad voluntatem Domini, which in English according to a true and Grammatical translation, is as followeth.

Inquiry is to be made also of customary Tenants, that is to say, How many customary Tenants there are, and how much Land every customary Tenant holdeth, what works, what customes he doth, and how much the works and customes of every Customary Tenant are worth by the year, and how much is paid (meaning by every one) of the Rent of Assize by the year, besides their works and customes which may be rated and valued; (as two or three dayes work in a year with Plough and Cart) and which are not at the will of the Lord: Whereby it appears, that a whole Parliament esteemed of them as customary Tenants, that their Rent was accounted then parcell of the Rent of Assize; and that all their works and customes were certain, according to the opinion of those two great Lawyers before-quoted, who lived in or near the said times, one whereof was Lord Chief Justice of England, and the other a great and learned Bishop. And for as much as Copyholders have been as much oppressed in Heriots, as in any other duty or service, we will therefore in brief speak a word or two concerning the antient Law in that point. *Fleta lib. 2. cap. 50.* and *Brit. fo. 178.* both say, that the Copy-hold Tenant, making his Testament upon his Death-bed, ought to make an acknowledgement of his Lord, by giving of him one Heriot. And *Bracton lib. 4. cap. 26.* saith, that the Soccager, whether qualified or free, ought at his death to respect his Lord with one Heriot, *Qua tamen prestatio est magis de gratia quam de jure*, which prestation or performance, saith he, is rather of favour than of right, and doth not at all touch the inheritance. And if we look a little higher, *Glanvill* Lord Chief Justice of England, in *H. 2. lib. 7. cap. 5. De legibus & consuetudinibus Anglie*, of the Laws and Customs of England, saith in these words, *Potest quilibet liber homo majoribus debitis non involutus, &c.* Every Freeman not greatly indebted, may in his sicknesse make a reasonable devise of his goods under this form, according to the custom of the Country, that he do acknowledge his Lord with the best and principallest he hath; next the Church, and afterwards other persons, as he pleaseth: but

saith he, whatsoever the customes of diverse Countries and places are in this point, according to the Lawes of the Kingdom, no man is bound, in his Testament to leave any thing to any person, but at his free will and pleasure. For every mans will, saith he, is free, as well in reference to Testamentarie Laws, as to other Laws. So that here you may plainly perceive, that by the Law of the Land, according to the opinion of this great Iudge, no Heriot was due; and if there were any due by any particular custome, it was but one, and that upon death only, and must be given by the Testator by Will too, and not be much in debt neither, whereby it appeareth according to the opinion of those great Lawyers, *Fleta*, *Britt.* *Bracton*, and *Glanvill*, all those Heriots which have been exacted of late in such multiplied numbers, have been illegal & unjust, and contrary to the good Laws and Customs of this Nation in former times.

Now by what hath been briefly said, it may easily appear to any indifferent man, who hath incroached most upon each others Liberties; Whether the great and potent wealthy Lord of the Manor, carrying all things before him by the virtue and charm of his unrighteous Mammon, or the poor despised trampled under-foot-Copy-holder, who hath been forc'd to lose his Liberties, to preserve his lively-hood. Whereas according to those great authorities of *Bracton*, *Britton*, and others above quoted, all Fines, Customes, and other services of Copy-holders, ought neither to be changed nor increased; and that according to others, who have strained the Law beyond its due bounds, in favour to Lords of Manors, all unreasonable Fines and Services are forbidden; and if all unreasonable, then certainly all Arbitrary, since it is abundantly made known by long experience to the People of this Nation, that all Arbitrary power, (as is the power of Lords of Manors, to set what Fines they please upon their Tenants, at Death or Alienation) is oppressive, Tyrannical, and contrary to the peace and freedom of this Common wealth, as fully manifested in a Declaration of this Parliament, set forth in *March* 1648. In these words, The Parliament of *England*, elected by the People, whom they represent, have long contended against Tyranny, and endeavoured to remove oppression, Arbitrary power, or power of will, and all opposition to the peace and freedom of the Nation. And again in another Declaration of the 7th. of *April*, 1646. in this manner. And as both Houses have already for the
ease

ease and benefit of the people, taken away the Court of Wards and Liveries, with all Tenures in Capite and Knight services: So we shall take special care, that as speedy and as great ease, may be had otherwise in other grievances, as the pressing occasions of the Commonwealth will admit. Wherefore (these arguments premised, being seriously considered) we humbly crave of your Excellency, that you would be pleased to intercede with our Representative, for the removall of that unjust and slavish bondage and yoke, which neither we nor our fore-fathers have been able to bear, that so we may not only in spirituals, but also in temporals, enjoy that freedom and liberty, which not only by Law, but by right of Conquest is due to the wel-affected people of this Commonwealth. It is the Law of Nature; yea and the Law of Christ too, *Fac alteri, quod tibi vis fieri*, do to others, as you would be done to. If so; How can freedom & liberty be denied to those, who with the hazard and losse of their lives, goods, and all, have purchased freedom and liberty, not only to their Representatives, and well-affected Potentates, but also to those who have been enemies to this Commonwealth? whereby they, who under the Monarchical yoke were in bondage, not only in respect of their estates, but of their persons also, are now restored to a noble and glorious liberty, whilst their fellow brethren, who ought to be sharers in this freedom, lye under the burthen of Tithes, and bondage of Copyholds; many whereof do at this day retain the dishonourable names of base Tenure and Villanage in the worst sense, as if we were rather returning back to *Egypt*, than in our progresse to *Canaan*. Ah most religious Sir! did we not *Dem.* like mind our own present power and profit, more than our trust and promises in times of danger, these things could not be: but what shall we say, *Deus dabit huius quicquid finem*, God will in his due time put a period to these things. Now to conclude, we once more humbly desire your Excellencies favour and assistance, in gaining freedom to those, who have been greatly instrumental in the work of the Lord, and for whose sake peradventure God hath been gracious to this our *Si-*on and Commonwealth; and we shall not only pray for the eternall happinesse of your Excellency, but also take the boldnesse to subscribe, as in all duty and gratitude we are bound,

*Your Excellencies most humble Servants
in the Lord Christ.*



*The Petition of the Inhabitants of the
County of Middlesex, concerning Tithes,
and Copy-holds of Inheritance, presented
to the Supreme Authority the Parliament
of England.*

Sheweth,

THat as your Petitioners are really sensible of the unwearied labours this honourable Parliament hath undergone, in the Vindication of the Rights and Liberties of the free-born people of this Nation, from the incroaching Tyranny of Kingly and Lordly power, for which they return a gratefull acknowledgement: So they desire to mind you, that the wel-affected of this Nation, have, in this common cause of publique freedom and preservation, faithfully served you in their severall places, willingly undergoing all burthens, either of Tax or Free-quarter; besides the voluntary loans of very many, even beyond their abilities, upon the Propositions. And since it is the undoubted right of the free-born people of this Nation, from whom all just power is derived, to present to their Parliament, or Representative, all their grievances, that so Adequate remedies may be duely applyed; Therefore we offer to your more serious considerations, these ensuing particulars to be speedily redressed.

First, Forasmuch as all Tithes, reliques of the late destroyed Hierarchy, are declared in the 2d. Book of *Cooks* Reports, in the Bishop of *Winchesters* Case, to be things meerly spiritual, and due by divine right; and for which there is no remedy at the Common Law: and also in his 2d. Book of *Instir.* and Chap. of Tithes, that by the Common Laws and customes of this Nation, Lands are undeci-

decimable : which is fully evidenced by a Canon of the Council of Lateran, under Greg. 10th. 1274. in this manner ; Let no man give his Tithes where he pleaseth, as before, but let them be paid to Mother Church. And Britton, though a Bishop, treating of Ecclesiastical power, and of what things the Church had consence, doth wholly omit Tithes, knowing very well that those Popish Canons and constitutions, which not long before had been made for the taking away the Tenth of mens Estates, were totally void, being Diametrically repugnant to Magna Charta. Which likewise is further attested, by a decretal Epistle sent from Innocent the 3d. Pope of Rome, to the Arch-Bishop of Canterbury, about the year 1215. wherein it is clearly acknowledged, That the free-born people of this Nation, did by the General, and till then observed custom of this Land, dispose of the Tithes or Tenths of their estates, according to their own free will and pleasure. So that it is very clear, Tithes have been formerly by the Popish Clergy subtilly perswaded, or rather extorted from our Ancestors, under the notion and consideration onely of a Divine right, and chiefly by virtue of the said Decretal, which so awed our forefathers, that it frightened them into a servile and unwilling obedience. Wherefore we humbly desire that all Tithes and Tenths (under the notion whereof we pay a fifth) may be speedily removed, as a great Oppression and Uirpation, that so Husbandry and Tillage may thereby receive the greater encouragement; and that all Impropriators may thereby receive such reasonable satisfaction (notwithstanding much may be said to the contrary) as you in your wisdoms shall think fit. And that likewise a comfortable maintenance may some other quiet and peaceable way according to the Word of God, be provided for the Ministry, that so the glorious Gospel of Jesus Christ may no longer be impeded, by that sensual and earthly Remora of litigious Tything, but that Evangelical Messengers may with the Apostle Paul, by the sweetnesse of their lives and conversation, convince gain-sayers, that they come not to seek ours, but us.

Secondly, That all Copy-hold Lands of inheritance, may be made free from all Fines, Heriots, and other slavish services brought in by, and after the Norman Tyranny, as may appear by *Bracton* a great Lawyer in H. 3. his time, in his first Book and 7th. Chap. of the Customs of England, where he saith, That, in the Conquest, men held their lands freely, by free services or customes, and cer-
tain

tain, untill being thrown out by usurping *Normans*, and their adherents, they were enforced to retake them again, to hold by unjust and unequal terms and services, yet still certain and nominated, which through the avarice, cruelty, and oppression of succeeding Lords of Manors, have been increased illegally, to a strange multiplication of Heriots, and Arbitrary raising of Fines, from two years value, according to the Quitrent, to two and three years value according to the full Rent, a thing altogether unreasonable, and unconscionable, as hath been clearly adjudged. And although your Petitioners humbly conceive, that Copy-holders of inheritance, ought by their Tenures to have been protected by their Lords, and to have been freed in this time of War, from all publick burthens, and taxes; yet so far have they been from affording the same unto them, that they have for the most part, forsaken and denyed them protection, whereby their Copy-hold Tenants by them deserted, have for a great part most willingly adhered to the Commonwealth, and have laid out themselves to the utmost, in bearing an equall share in all publick burthens with the Free-holders, to the impoverishing of themselves, their Wives, and Children. And Moreover since, as we are informed, much of the Lands setled upon Souldiery for their Arrears, are freed from all Tithes, Fines, and other slavish services, which we envy not, but exceedingly congratulate; nay since all Lands held in Capite and Knights service, are by an Act of this present Parliament freed from all ward-ships, and other slavish incumbrances, notwithstanding the greatest benefit thereof doth redound to the advantage and emolument of those who have been in actual Armes against the State, or who at least in their declared affections have been utter enemies thereof: Seeing we say, that not only the Army, but your enemies have tasted so deeply of your grace and favour, Let it not be said in *Gath*, nor published in the streets of *Ascalon*, that your dearest Friends, those out of whom your Armies have been raised, formed, and supplied with men and money all along; those by whom you have in the greatest danger, and times of exigency, been most readily and willingly assisted, even to the hazard and losse of their lives: Let it not be said, we humbly reiterate, that those who have been your friends, Gods friends, and their Countries friends, should now at length be left to remain in bondage, and *Gibeonitish* slavery, whilst their enemies riot and abound in liberty

(17)

erty and freedom. Wherefore we humbly desire, that all Copy-holders of Inheritance, may according to your severall Declarations of the 7th. of *April*, 1646. and of *March*, 1648. be restored to christian freedom and liberty, the fruits of Conquest, and the just reward of their expence and hazard, that so of victors they may not become slaves and vassals in their estates, to their conquered Lords, whom they begin already to feel, and are dayly like to find more cruell and unreasonable, than ever, if they shall return again to reign over them, with the full sayl of usurped power.

Thus hoping that the same God, who hath even miraculously given you Victory over your enemies, rest from warres, peace in your Habitations, and put a power into your hands to do righteous things for the good of this Nation, will also put into your hearts and minds, to do these things represented unto you; and what else, you in your wisdoms shall know to be for the good and welfare of this Common-wealth.

And we shall ever pray, &c.

*The Case of Copy-holders stated, according to the * Lesbian Rule of the Law, in the corrupt times of Monarchy; wherein is clearly proved, that no Lord of a Manor of Copy-holds of Inheritance, can take for a Fine where (as they say) uncertain, of his Copyhold Tenant two years clear yearly value of the Land.*

* Quando lex accommodatur ad causam & personam, & non e contra. when the Law is applyed to the cause and person, not they to it.

First, Because it is resolved by *Popham* Chief Justice, *Clench*, *Gandy*, and *Fenner*, Justices of the upper Bench in the 42. and 43 *Eliz.* between *Hubbard* and *Hammon*; that, if the Fines of

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Copy.

Copy-holders of a Manor are incertaine upon admittances, yet the Lord may not demand or exact an excessive or unreasonable Fine; and if he doth, the Copy-holder may deny to pay it without forfeiture; and according to this resolution, it was then said, that it had been formerly adjudged in the same Court, in one *Hoddesdens Case*. *Cookes Reports*, lib. 4to.

Now it is a Rule and Maxim, that all excessivenesse is abhorred in Law; and that all things ought to be interpreted with equity and moderation. As put case, the Lord of a Manor, where Fines, through his Tyranny are incertain, hath taken time out of mind, about a years value, not much under nor over: If there one of his Copy-hold Tenants shall improve his Land by great charge and industry, from 5 l. *per annum*, to be worth 20 l. *per annum*, and then dye, and after the Lord shall set two years Fine, *viz.* 40 l. upon his Heir, this will be an excessive and most unreasonable Fine. First, Because where a Lord hath usually taken about a year, though a little under or over, there to take a year and half, (though according to the value before improvement) is excessive, and so illegall; if the Rules of right reason, moderation and equity, were closely held to and kept. Next, it is altogether unreasonable, because, through this improvement of the Tenant, with a vast expence and charge, perhaps treble to the Land, the Lord now comes to take in a little compasse of time, at a year and halfe Fine, six years years value, at two years Fine, eight years value according to the yearly Rent and worth of the Land before improvement: So that now a covetous and unconscionable Lord, (as too many there are) will take advantage to enrich himself out of the Tenants vast expence and industry, contrary to the Rules of Justice, equity and honesty.

Secondly, and lastly, no Lord of a Manor can by the present Law, take two years clear yearly value for a Fine, where (as Lawyers say) they are uncertain, (though repugnant to those great Authorities in the Letter before recited, and contrary to their own Maxims, and abundantly favouring of tyranny) upon the admittance of a Copy-hold Tenant, as is clearly resolved in an action of Trespasse between *Stallon* and *Brady*, commenc'd
in

in the first year of King *James*, in the Court of Common Pleas; where the Lord of the Manor did set a Fine at two years clear yearly value, which the Tenant denying to pay, being unreasonable, the Lord enters, and thereupon the Tenant brings an action of Trespasse, and after five years demurre, consultation being had with all the Iudges and great Lawyers of *England*, it was at length, (*viz.*) in the sixth year of King *James*, by the Iudges of the said Court of Common Pleas, fully and unanimously resolved, that the said Fine of two years was unreasonable, and so no forfeiture by the Tenants denial.

Now from hence it must be concluded that for any Lord of a Manor to demand a year and a halves Fine, is the very utmost rigour and extremity of the Law, as it hath flowed to us out of the impure fountain of Monarchy, and all those who have exacted more, have done illegal, and unwarrantable Acts, according to that *Lesbian* Rule.

But where Tenants have at their great charge, made improvements as is above declared, there for the Lord to take a year, much more a year and half, is altogether unconscionable, and against the Rules of equity.

The Case of intolerable Oppression in point of Heriots.

A Copy-hold Tenant holds a 100. Acres of Land, worth *per annum* 5 s. per Acre, and 20 s. Rent yearly, and for which, the Lord claims a Heriot upon Death. The Tenant aliens his Land to a hundred men; now by our Book-Law, made in corrupt times meerly in favour of Lords, and to oppresse poor people, the Lord of the Manor shall have his 20 s. Rent, and besides, a Heriot for every Acre upon the death of every particular Tenant; for this reason, which is no reason, because a Heriot is an indivisible service: so that it may so fall out, that the Lord shall have Heriots in a short time, to the value of one thousand pounds, whereas the whole is not worth five hundred pounds; and besides, a poor man having an Acre of his Land not worth five pound, and dying seised, the Lord shall enter upon his Goods, and take away for a Heriot, a Cow or Horse worth six or eight pound, to the utter ruine of his Wife and Children.

Now from a division of Land to urge a multiplication of Heriots, hath neither antient Law, reason nor honesty in it, notwithstanding those slight Arguments, and fond distinctions of Heriot Service, and Heriot Custome, which are used to the contrary.

Reader these names should have been placed at the end of the 13th Page.

Col: <i>Pride,</i>	<i>Aug. Wingfield,</i>	<i>Robert Cromwell,</i>
Col. <i>Potter,</i>	<i>Henry Arundell,</i>	<i>Nich: Beale.</i>

F I N I S

Vindiciae Medio-Saxonicae,

38

O R,

Tithes totally Routed,

B Y

MAGNA CHARTA

I N

A Reply to an Answer of
Middlesex Letter and Petition, in the
latter end of a Tract, called,
A Treatise of Tithes.

WHEREIN

The Invalidity of the said Treasurers Arguments are fully manifested, and the said Letter and Petition clearly vindicated from Error and Mistake.

B Y

[AUG. WINGFIELD, A Member
of this present PARLIAMENT.

L O N D O N,

Printed by F. L. for William Larnar, at the Black-
more near Fleet-Bridge, 1653.

32

WILLIAM B. DAVIS

1870

WILLIAM B. DAVIS

FROM THE LIBRARY

OF THE

STATE OF

MASSACHUSETTS

A Reply to an Answer of

the Intervenor

to the Answer of the Intervenor

to the Answer of the Intervenor

to the Answer of the Intervenor

BY

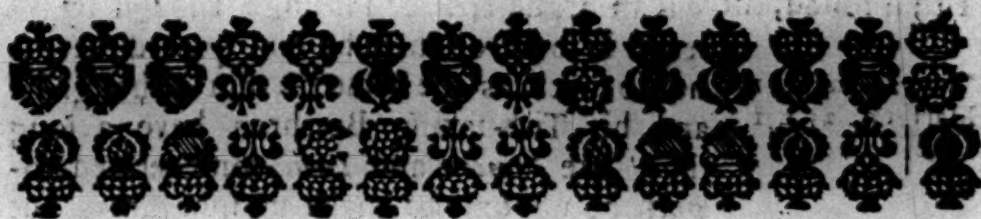
WILLIAM B. DAVIS

of the State of Massachusetts

1870

Printed by H. M. for W. B. Davis, at the

Massachusetts State House, 1870



Tithes totally routed, by Magna Charta.

HAVING perused a Treatise of Tithes penn'd by way of Answer to its Opponents, by one, as it is conceived, of the long Robe; we thought fit to give timely admonition, that though he pretend to be a wel-wisher to Religion and Propriety, yet when he speaketh fair, men believe him not; for there are, it is to be feared, seven Abominations in his heart, who though his *Sophisticated Arguments* be covered with deceit, yet shall his wickedness be shewed before the whole Congregation. *Prov. 26. 25, 26.*

In his Epistle to the Reader, he discovers both his spirit and his pride, censuring his Antagonists, as clamorous malicious ignorants, though perhaps in the judgement of unbiaised Moderators, more learned, peaceable, and more Evangelically spirited than himself. But fearing lest his great *Diana* Tithes, the Nursery of contention and strife, should in these days of Reformation, and restauration of publique Freedom and liberty, like *Dagon* before the *Ark*, fall to the ground and come to nought; he hath therefore, out of his worldly wisdom, judg'd it very opportune (both in reference to himself and also to his Clients the Tith-taking Priesthood and Impropiator) in this extremity of time, to force into his Aid a Catalogue of Acts of Parliament, though to little purpose, since few of them before the Statutes of *H. 8.* intimate so much as a right, much lesse command the payment of Parochial Tithes to Priests or others, as if this Respondent would make us all beleeve, that *Ubi nomen Decima, ibi argumentum Decimandi*, that wheresoever in any Statute the word

Tith is found, there is an argument for Tithing: though by his leave in some of them by him quoted there is not so much as the name: But although he and his Tith-taking Brethren have a long time, like *Simion* and *Levi*, confederated together, not only to make us ignorants, but still to keep so, by perswading of us and our fore fathers, That Tithes were first due by Divine Law, then by Canon Law, and now by Statute Law; yet are we and the good people of *England* resolved to be no longer deluded by them with their Paralogisms, and deceitfull reasonings.

And therefore that we may no longer digresse by way of preface, we shall now come to reply, and to examine those two grand objections, which the Author of the said Treatise raiseth against the *Middlesex* Letter and Petition in the Expository opening of those two Statutes of *Magna Charta*. *ch. 29.* and *1. R. 2. ch. 14.* where this Respondent saith *pag. 13.* That for the Penner of the said Letter and Petition to make the People believe, that the payment of Tithes is against *Magna Charta*, is such an exposition as was never made upon that Statute, and therefore to rectifie this Errour (as he calls it) he hath laboured, though in vain, to overthrow the said exposition, and those invincible arguments built upon it, and to set up his own contrary interpretation and false assertion, (*viz.*) That Tithes and the payment thereof by the people, were confirmed by *Magna Charta*, *ch. 1.* under the Notion of Church rights.

And first for proof thereof he saith, *pag. 14.* That by the Common Law of this Land, at the confirmation of *Magna Charta*, Ecclesiastical persons had remedy to recover their Tithes in the Spiritual Court, and then concludes, that the Law gives no remedy but where there is a right: which assertion is very untrue. For *Cook* upon Tithes saith, That by the Common Law Lands are undecimable, and if undecimable, then certainly by that Law there can be no Church right to Tithes, neither to be recovered by virtue thereof in the Spiritual, or Popes Court, Since the people of *England* were not bound in Law by his Canons. Neither is *Cook* single in his opinion, For *Selden* fo. 291 saith, That Arbitrary disposition of Tithes used by the Laity, as well *de jure*, of right, (as the positive Law then received and practiz'd

practiz'd was) as *de facto*, of deed and practice, is that which *Wick-*
liff remembred in his Complaint to the King and Parliament un-
 der R. 2. The substance whereof in brief, is, That the proud and
 pompous Priests did constrain the poor People of *England* (viz. by
 Popish Canons) to pay their Tithes unto them, whereas within a
 few years before, they paid their Tithes and Offerings at their
 own free will and pleasure. Which is also attested by *Lud-*
low a Judge of Assize in E. 3. who saith, That in antient time a
 man might give his Tith to what Church he would; which is true
 sayes Judge *Brook* in Abridging the case. *Selden fol. 252.*

And the said Author further saith, *fo. 290.* That under *Inno-*
cent the 3d. it was usuall in fact for Laymen by the practice of the
 Law at that time both Common and Canon, to convey the right
 of their Tithes, as Rent-charges or the like, to what Church or
 Monastery they pleased, and such Conveyances were clearly
 good. And whereas the Author of the said Treatise, p. 14. quo-
 teth Mr. *Selden* for his Authority of Parochial right, he is clearly
 mistaken, since Mr. *Seldens* judgement in the same place immedi-
 ately following is cleerly to the contrary, and that which is here
 alleged as the Treatisers main Argument, is nothing but the opi-
 nion of the Canonists recited by Mr. *Selden*, and by him in the
 same and following pages fully confuted, pag. 144, 146.

Moreover *Magna Charta* is, by Act of Parliament made in
 25 E. 1. called, the Confirmation of the Charters, adjudged and
 declared to be the Common Law of the Land, which if true, as it
 is most true, then Tithes being not so much as named, much less
 confirmed by *Magna Charta*, are not due by the Common Law,
 (as the said Respondent weakly supposeth.) and so not at all un-
 der Ecclesiastical cognisance.

But he objecteth and saith, That Tithes are contained in these
 words, *The Churches Rights, Mag. Char. cap. 1.* for further sa-
 tisfaction whereof, see *Cooks* exposition upon the very same
 words, where he saith, that Ecclesiastical persons shall enjoy their
 lawfull jurisdictions, and other their rights (but not one word of
 Tithes) without diminution, and that no new Rights were given
 unto them hereby, but such as they had before confirmed: Now
 if no new Rights were given, then not Tithes, since the Author of
 the said Treatise confesseth p. 14. that the Common Right of
 Tithes due to the Rector of the Parish, is but from the time of K.

John, and then, as *M. Selden* (whom he quoteth) p. 146. declareth, not so much as in opinion established, whereby it is evident, not only by *Selden* and his own confession, but also in the judgment of *Cook*, that at the confirmation of *Magna Charta*, Tithes were not at all comprehended in the Rights of the Church.

Which will yet more fully appear if we consult *Mr. Seldens* book of Tithes, and the Roll of *Winton*. In the first whereof pag. 137: It is delivered for a clear truth, that there never was any Canon of any General Council as yet found, that purposely commanded payment of Tithes, nor any that expressly supposed them a duty of Common right, before the Council of *Lateran*, under Pope *Innocent* the 3d. 1615: So that at the Council of *Lateran*, which was in the latter end of *K. John*, and but 12 years or thereabouts before the confirmation of *Magna Charta* by *H. the 3d.* Tithes were not due by common right, that is by Common Law, and so consequently no rights of the Church. And if not then due by Common Law, then certainly not at the confirming of *Magna Charta*, since in the judgment of all, both Canonists and Common Lawyers, 12 years is not a competency of time, either for custom, or prescription, the one allowing 40 years at least, the other time out of mind.

And yet to proceed, this Respondent doth further acknowledge, p. 14. that there was no Parochial Right of Tithes till after the Council of *Lateran* aforesaid, 1615. and that after the Decretal Epistle of *Innocent* the 3d sent to the Arch-Bishop of *Canterbury* in the year aforesaid, the right of Tithes was allowed (but you must know by whom, (*viz.*) the Pope and his Clergy, not the People) and so became *Lex Terra*, a Law of the Land, which are likewise the words and judgement of *Cook*: Now of what force and validity, a Right of Tithes, grounded upon a Canon of the Pope, and diametrically repugnant to *Magna Charta* can be, let all men judge; since *Cook* their Oracle hath declared in his Chapter of Tithes, that all Canons which are against the Common Law, or Custom of the Land, are of no force.

Now as to the Roll of *Winton*, called by some *Doomsday Book*, which was a survey of all the Lands & Revenues both of Clergy & Laity, exactly taken by Commiss. in every County throughout the Nation, and returned into the Exchequer about the latter end of the *Conquerours* Reign, It is there Recorded in particular what the

the Revenues and dues of every Presbyter and Church were, but yet notwithstanding very rarely, if at all, are any Tithes found among the Church Revenues. So that hence it is most cleer, First, that in *William the Conquerors* time, Tiths were no Revenue nor rights of the Church; nor yet Secondly, in *H. 2.* his time, see the Letter and Petition, p. 5. And lastly, by the *Authors* own confession they became due onely but from the latter end of *K. Johns* Reign, and that grounded meerly upon a Popish Canon, contrary to *Magna Charta*, which is acknowledged by the Learned, to be the Common Law of *England*, both before and after the Conquest.

The second and last objection which the Author of the said Treatise maketh, is upon our exposition of the Statute of 1 R. 2. cap. 14. which wee shall here make good to be most genuine and true, notwithstanding his false calumination; and that his Anti-exposition is most absurd and false, and such as shew not Custom wrought another Nature in him, to speak and write untruly, could never have fell from him. Now the question between us is, whether the *Averment* there spoken of be Lay *Averment*, and so to be made by the Plaintiff, according to his exposition, or Church *Averment*, and so to be made by the Defendant, according to our exposition: whether of which is most true, we shall leave to every one to judge, by opening unto you the Nature of *Averment* out of the judgment of the Learned, and by holding forth such reasons as shall in brief be produced.

And first *Covells Interpreter* saith, That *Averment* signifieth (according to the Author of Terms of the Law) an offer of the Defendant to make good or to justify an exception pleaded in abatement or bar of the Plaintiffs Act. And Sir *Hen. Smith* in his book of Law fo. 359 also saith, That *Averments* must be offered to be proved true in Barrs. 1. Answers, Replications, Rejoinders, &c. but not in Counts and Declarations. And of the same judgement is Sir *Edw. Cook*, in his first part of Institutes fo. 362. So that it is evident, *Averments* are properly to be made by Defendants in their answers, or in after pleadings, and not by Plaintiffs in their Declarations: unlesse in some few particular cases, of which this is none, as is evident, not only by the Grammatical, and Logical Construction of the said Statute, but even

even in the judgement of Learned *Rush*, a Justice of the Common-pleas, in *Q. Maris* days, who to put the question out of doubt, hath set it down in the margent of his Abridgement of the Statutes, to be Church *Assent*, which we conceive to be a final determination of the question.

And as to your Ordinance of *Nov. 1644* for the payment of Tithes, we clearly conceive it to be the judgement of all the learned, that it is of no longer validity than during Parliamentary Session, which is now dissolved upon sure grounds of Piety, Publique freedom, right, reason, and honestie: and that notwithstanding the Generall consent of the major part, either precedent, or subsequent, of the Supreme Authority, the People.

Now by what hath been said it will easily appear who doth most abuse and mislead the People, and whether exposition of *Magna Charta* and the other Statute of *R. 2.* is most true. That of the Letter and Petition, back'd with right reason, and the Authorities of great Lawyers and learned Judges, or that of the Author of the Treatise, being a fancy of his own brain, and raised out of implicate Terms, which he that believes, had need of of a Popish and implicate faith.

FINIS

